

II

98TH CONGRESS  
1ST SESSION

# S. 338

To revise the procedures for soliciting and evaluating bids and proposals for Government contracts and awarding such contracts, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 1 (legislative day, JANUARY 25), 1983

Mr. COHEN (for himself, Mr. ROTH, Mr. LEVIN, Mr. RUDMAN, Mr. PERCY, Mr. DURENBERGER, Mr. STEVENS, Mr. DANFORTH, Mr. PRYOR, Mr. PROX-MIRE, Mr. HEINZ, and Mr. MITCHELL) introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

FEBRUARY 2 (legislative day, JANUARY 25), 1983

Ordered, that if and when reported, the bill be referred to the Committee on Armed Services for not to exceed sixty calendar days (excluding any period of seven or more calendar days that the Senate is not in session) to consider any provisions which amend title 10 of the United States Code. Ordered further, that if the bill is not reported within the sixty-day period the committee will be discharged, but in no event will the committee be discharged prior to June 15, 1983

MARCH 23 (legislative day, MARCH 21), 1983

Reported by Mr. COHEN, with amendments

[Omit the part struck through and insert the part printed in italic]

Referred to the Committee on Armed Services pursuant to the order of  
February 2, 1983

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## A BILL

To revise the procedures for soliciting and evaluating bids and proposals for Government contracts and awarding such contracts, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the “Competition in Contract-  
4       ing Act of 1983”.

5       **TITLE I—AMENDMENTS TO FEDERAL PROPERTY**  
6       **AND ADMINISTRATIVE SERVICES ACT OF 1949**

7       **COMPETITIVE AND NONCOMPETITIVE PROCEDURES**

8       SEC. 101. (a) Title III of the Federal Property and Ad-  
9       ministrative Services Act of 1949 (41 U.S.C. 251 et seq.) is  
10      amended—

11               (1) by striking out section 303 (41 U.S.C. 253)  
12               and the heading of such section and inserting in lieu  
13               thereof the following:

14                       **“COMPETITION REQUIREMENTS**

15               **“SEC. 303. (a) Except as provided in subsection (e) or**  
16               otherwise authorized by law, executive agencies shall use  
17               competitive procedures in making contracts for property and  
18               services. Executive agencies shall use advance procurement  
19               planning and market research and shall prepare specifications  
20               in such a manner as is necessary to obtain effective competi-  
21               tion with due regard to the nature of the property or services  
22               to be acquired. Executive agencies shall use the competitive  
23               procedure or combination of competitive procedures that is  
24               best suited under the circumstances of the procurement  
25               action and shall specify its needs and solicit bids, proposals,

1 or quotations in a manner designed to achieve effective com-  
2 petition for the contract.

3       “(b) An executive agency may award a contract under  
4 this title in the procurement of property or services in order  
5 to establish or maintain any alternative source or sources of  
6 supply of such property or services if the executive agency  
7 determines that to do so would (1) increase competition and  
8 would likely result in reduced overall costs for such procure-  
9 ment, or for any anticipated procurement, of such property or  
10 services, or (2) be in the interest of industrial mobilization in  
11 case of a national emergency.

12       “(c) Procurement regulations shall include special sim-  
13 plified procedures and forms for small purchases to facilitate  
14 making small purchases efficiently and economically.

15       “(d) For other than small purchases, an executive  
16 agency, when using competitive procedures—

17               “(1) shall solicit sealed bids when—

18                       “(A) time permits the solicitation, submis-  
19 sion, and evaluation of sealed bids;

20                       “(B) the award will be made on the basis of  
21 price and other factors considered;

22                       “(C) it is not necessary to conduct discus-  
23 sions with the responding sources about their bids;

24               and

1           “(D) there is a reasonable expectation of re-  
2           ceiving more than one sealed bid;

3           “(2) shall request competitive proposals when  
4           sealed bids are not required under clause (1) of this  
5           subsection.

6           “(e) An executive agency may use noncompetitive pro-  
7           cedures only when—

8           “(1) the property and services needed by the Gov-  
9           ernment are available from only one source and no  
10          other type of property or services will satisfy the needs  
11          of the executive agency;

12          “(2) the executive agency’s need for the property  
13          or services is of such *unusual and compelling* urgency  
14          that the Government would be seriously injured by the  
15          delay involved in using competitive procedures;

16          “(3) it is necessary to award the contract to a  
17          particular source or sources in order to maintain an es-  
18          sential industrial capability in the United States or to  
19          achieve national industrial mobilization;

20          “(4) the terms of ~~any agreement with~~ *any inter-*  
21          *national agreement or treaty between the United States*  
22          *Government and* a foreign government, or the direc-  
23          tions of any foreign government reimbursing the execu-  
24          tive agency for the cost of the procurement of the  
25          property or services for such government, have the

1 effect of requiring the use of noncompetitive proce-  
2 dures;

3 “(5) a statute provides that the procurement be  
4 made through another executive agency or a specified  
5 source; or

6 “(6) the disclosure of the executive agency’s needs  
7 to more than one source would compromise the nation-  
8 al security.

9 “(f) An executive agency may not award a contract, ~~for~~  
10 ~~other than small purchases, using noncompetitive procedures~~  
11 ~~unless a notice has been published pursuant to section~~  
12 ~~313(a)(1)(A).~~”; *using noncompetitive procedures unless—*

13 “(1) *in the case of any contract other than a*  
14 *small purchase, a notice has been published with re-*  
15 *spect to such contract pursuant to section 313 and all*  
16 *bids, proposals, and quotations received in response to*  
17 *such notice have been considered by such executive*  
18 *agency; and*

19 “(2) *in the case of any contract exceeding*  
20 *\$100,000, the use of such procedures is approved by*  
21 *the head of the organizational element of such executive*  
22 *agency which has the responsibility to enter into such*  
23 *contract or by a designee of the head of such organiza-*  
24 *tional element who is higher in such organizational ele-*

1       *ment than the contracting officer issuing the solicita-*  
2       *tion with respect to such contract.”;*

3               (2) by adding at the end of section 309 (41  
4       U.S.C. 259) the following new subsections:

5       “(b) The term ‘executive agency’ has the same meaning  
6       as provided in section 4(a) of the Office of Federal Procure-  
7       ment Policy Act (41 U.S.C. 403(a)), except that such term  
8       does not include the departments or establishments specified  
9       in section 2303(a) of title 10, United States Code.

10       “(c) The term ‘competitive procedures’ means proce-  
11       dures under which an executive agency enters into a contract  
12       after soliciting sealed bids or competitive proposals from  
13       more than one source that is capable of satisfying the needs  
14       of the executive agency.

15       “(d) The term ‘noncompetitive procedures’ means proce-  
16       dures other than competitive procedures.

17       “(e) The term ‘small purchase’ means any purchase or  
18       contract which does not exceed \$25,000. A proposed pro-  
19       curement shall not be divided into several procurements pri-  
20       marily for the purpose of using the small purchase proce-  
21       dures.”; and

22               (3) by adding at the end thereof the following new  
23       sections:

1                   “SOLICITATION REQUIREMENTS

2           “SEC. 311. (a)(1) Each solicitation under this title shall  
3 include specifications which—

4           “(A) consistent with the needs of the executive  
5 agency, permit effective competition; and

6           “(B) include restrictive provisions or conditions  
7 only to the extent necessary to satisfy such needs or as  
8 authorized by law.

9           “(2) For the purposes of paragraph (1), the type of spec-  
10 ification included in any solicitation shall depend on the  
11 nature of the needs of the executive agency and the market  
12 available to satisfy such needs. Subject to such needs, specifi-  
13 cations may be stated in terms of—

14           “(A) function so that a variety of products or  
15 services may qualify;

16           “(B) performance, including specifications of the  
17 range of acceptable characteristics or of the minimum  
18 acceptable standards; or

19           “(C) design requirements.

20           “(b) Each solicitation for sealed bids or competitive pro-  
21 posals other than for small purchases shall include, in addi-  
22 tion to the specifications described in subsection (a)—

23           “(1) a statement of—

24           “(A) all significant factors, including price,  
25 which the executive agency reasonably expects to

1 consider in evaluating sealed bids or competitive  
2 proposals; and

3 “(B) the relative importance assigned to  
4 those factors;

5 “(2) in the case of sealed bids—

6 “(A) a statement that sealed bids will be  
7 evaluated without discussions with the bidders;  
8 and

9 “(B) the time and place for the opening of  
10 the sealed bids; and

11 “(3) in the case of competitive proposals—

12 “(A) a statement that the proposals are in-  
13 tended to be evaluated with, and awards made  
14 after, discussions with the offerors but might be  
15 evaluated and awarded without discussions with  
16 the offerors; and

17 “(B) the time and place for submission of  
18 proposals.

19 “EVALUATION AND AWARD

20 “SEC. 312. (a) An executive agency shall evaluate  
21 sealed bids and competitive proposals based on the factors  
22 specified in the solicitation.

23 “(b) All sealed bids or competitive proposals received in  
24 response to a solicitation may be rejected if the head of the



1 executive agency determines that such action is in the public  
2 interest.

3       “(c) Sealed bids shall be opened publicly at the time and  
4 place stated in the solicitation. The executive agency shall  
5 evaluate the bids without discussions with the bidders and  
6 shall, except as provided in subsection (b), award a contract  
7 with reasonable promptness to the responsible bidder whose  
8 bid conforms to the solicitation and is most advantageous to  
9 the United States, considering the price and the other factors  
10 included in the solicitation under section 311(b)(1). The  
11 award of a contract shall be made by transmitting written  
12 notice of the award to the successful bidder.

13       “(d)(1) The executive agency shall evaluate competitive  
14 proposals and may award a contract—

15               “(A) after discussions conducted with the offerors  
16 at any time after receipt of the proposals and prior to  
17 the award of the contract; or

18               “(B) without discussions with the offerors beyond  
19 discussions conducted for the purpose of minor clarifi-  
20 cation.

21       “(2) In the case of award of a contract under paragraph  
22 (1)(a)(A), the executive agency shall conduct, before such  
23 award, written or oral discussions with all responsible offer-  
24 ers who submit proposals within a competitive range, price,  
25 and other evaluation factors considered.

1       “(3) In the case of award of a contract under paragraph  
 2 (1)(B), the executive agency shall award the contract based  
 3 on the proposals as received (and as clarified, if necessary, in  
 4 discussions conducted for the purpose of minor clarification).

5       “(4) The executive agency shall, except as otherwise  
 6 provided in subsection (b), award a contract with reasonable  
 7 promptness to the responsible offeror whose proposal is most  
 8 advantageous to the United States, considering price and the  
 9 other factors included in the solicitation under section  
 10 311(b)(1). The executive agency shall award the contract by  
 11 transmitting written notice of the award to such offeror and  
 12 shall promptly notify all other offerors of the rejection of their  
 13 proposals.

14       “(e) If the head of an executive agency considers that  
 15 any bid received under sealed bid procedures evidences a vio-  
 16 lation of the antitrust laws, he shall refer the bid to the At-  
 17 torney General for appropriate action.

18                               “PROCUREMENT NOTICE

19       “SEC. 313. (a)(1) Except as provided in subsection (e)  
 20 and subject to paragraph (2)—(c)—

21               “(A) an executive agency intending to ~~enter into~~  
 22       *solicit bids, proposals, or quotations* for a contract for  
 23       property or services at a price exceeding the ~~maximum~~  
 24       ~~amount established for small purchases in section~~  
 25       ~~309(e)~~ \$10,000 shall furnish for publication by the Sec-

1       retary of Commerce a notice described in subsection  
2       (b)(1); and

3               “(B) an executive agency awarding a contract for  
4       property or services at a price exceeding the maximum  
5       amount established for small purchases in section  
6       309(e) \$10,000 shall furnish for publication by the Sec-  
7       retary of Commerce a notice announcing such award if  
8       *there is likely to be any subcontract under such*  
9       *contract.*

10       ~~“(2) The Administrator for Federal Procurement Policy~~  
11       ~~may establish such minimum price as he considers appropri-~~  
12       ~~ate for the purposes of paragraph (1) at an amount that is~~  
13       ~~lower than the amount referred to in clause (A) or (B) of such~~  
14       ~~paragraph.~~

15       “(2) *The Secretary of Commerce shall publish promptly*  
16       *in the Commerce Business Daily each notice required by*  
17       *paragraph (1).*

18       “(3) *Whenever an executive agency is required by para-*  
19       *graph (1)(A) to furnish a notice of a solicitation to the Secre-*  
20       *tary of Commerce, such executive agency may not—*

21               “(A) *issue such solicitation earlier than fifteen*  
22       *days after the date on which such notice is published*  
23       *by the Secretary of Commerce; or*

24               “(B) *establish a deadline for the submission of*  
25       *bids, proposals, or quotations in response to such solici-*

1        *tation that is earlier than thirty days after the date on*  
2        *which such solicitation is issued.*

3        ~~“(b)(1)~~ Each notice required by subsection (a)(1)(A) shall  
4        *include—*

5                ~~“(A) be published as early as practicable in the~~  
6        ~~procurement process, but not less than thirty days~~  
7        ~~before the date set for the receipt of bids or proposals;~~  
8        ~~and~~

9                ~~“(B) include—~~

10                ~~“(i) a description of the property or services~~  
11        ~~to be contracted for, which description is not un-~~  
12        ~~necessarily restrictive of competition;~~

13                ~~“(ii) the identity and location of the officer or~~  
14        ~~employee of the executive agency who may be~~  
15        ~~contacted for the purpose of obtaining a copy of~~  
16        ~~the solicitation;~~

17                ~~“(iii) a statement that any person may~~  
18        ~~submit a bid, proposal, or quotation which shall~~  
19        ~~be considered by the executive agency; and~~

20                ~~“(iv) in the case of a procurement using non-~~  
21        ~~competitive procedures, a statement of the reason~~  
22        ~~justifying the use of noncompetitive procedures~~  
23        ~~and the identity of the intended source.~~

13

1       ~~“(2) The Secretary of Commerce shall publish promptly~~  
2 ~~each notice required by subsection (a)(1)(B) after the time of~~  
3 ~~the award of the contract.~~

4       ~~“(e) The requirements of subsection (a) do not apply~~  
5 ~~to—~~

6           ~~“(1) any classified procurement with respect to~~  
7 ~~which a notice under such subsection cannot be written~~  
8 ~~in a manner which avoids the disclosure of classified~~  
9 ~~information; and~~

10          ~~“(2) any procurement under conditions described~~  
11 ~~in clauses (2), (3), (4), or (5) of section 303(e).~~

12           ~~“(1) a description of the property or services to be~~  
13 ~~contracted for, which description is not unnecessarily~~  
14 ~~restrictive of competition;~~

15           ~~“(2) the name and address of the officer or em-~~  
16 ~~ployee of the executive agency who may be contacted~~  
17 ~~for the purpose of obtaining a copy of the solicitation;~~

18           ~~“(3) a statement that any person may submit a~~  
19 ~~bid, proposal, or quotation which shall be considered by~~  
20 ~~the executive agency; and~~

21           ~~“(4) in the case of a procurement using noncom-~~  
22 ~~petitive procedures, a statement of the reason justifying~~  
23 ~~the use of noncompetitive procedures and the identity of~~  
24 ~~the intended source.~~

1       “(c)(1) A notice is not required under subsection (a)(1)  
2 if the notice would disclose the executive agency’s needs and  
3 the disclosure of such needs would compromise the national  
4 security.

5       “(2) The requirements of subsection (a)(1)(A) do not  
6 apply—

7               “(A) to any procurement under conditions de-  
8 scribed in clause (2), (3), (4), or (5) of section 303(e);  
9 and

10              “(B) in the case of any procurement for which the  
11 head of the executive agency carrying out such procure-  
12 ment makes a determination in writing, with the con-  
13 currence of the Administrator of the Small Business  
14 Administration, that it is not appropriate or reasonable  
15 to publish a notice before issuing a solicitation.

16                               “RECORD REQUIREMENTS

17       “SEC. 314. (a) Each executive agency shall establish  
18 and maintain for a period of five years a record, by fiscal  
19 year, of the procurements, other than small purchases, in  
20 such fiscal year in which—

21               “(1) noncompetitive procedures were used; and

22               “(2) only one bid or proposal was received after  
23 competitive procedures were used.

24       “(b) The record established under subsection (a) shall  
25 include, with respect to each procurement—

1           “(1) information identifying the source to whom  
2           the contract was awarded;

3           “(2) the property or services obtained by the Gov-  
4           ernment under the procurement;

5           “(3) the total cost of the procurement;

6           “(4) the reason under section 303(e) for the use of  
7           noncompetitive procedures; and

8           “(5) the position of the officers or employees of  
9           the executive agency who required and approved the  
10          use of noncompetitive procedures in such procurement.

11          “(c) The information included in the record established  
12          and maintained under subsection (a) shall be transmitted to  
13          the Federal Procurement Data Center referred to in section  
14          6(d)(5) of the Office of Federal Procurement Policy Act (41  
15          U.S.C. 405(d)(5)).”.

16          (b) The table of contents of such Act is amended—

17                  (1) by striking out the item relating to section 303  
18                  and inserting in lieu thereof the following:

                “Sec. 303. Competition requirements.”;

19                  and

20                  (2) by inserting after the item relating to section  
21                  310 the following new items:

                “Sec. 311. Solicitation requirements.

                “Sec. 312. Evaluation of bids; awards.

                “Sec. 313. Procurement notice.

                “Sec. 314. Record requirements.”.

1 COST AND PRICING DATA

2 SEC. 102. Section 304 of the Federal Property and Ad-  
3 ministrative Services Act of 1949 (41 U.S.C. 254) is amend-  
4 ed by adding at the end thereof the following new subsection:

5 “(d)(1) A prime contractor or any subcontractor shall be  
6 required to submit cost or pricing data under the circum-  
7 stances listed below, and shall be required to certify that, to  
8 the best of his knowledge and belief, the cost or pricing data  
9 he submitted was accurate, complete, and current—

10 “(A) prior to the award of any prime contract  
11 under this title using other than sealed bid procedures  
12 where the price is expected to exceed ~~\$500,000~~  
13 *\$100,000*;

14 “(B) prior to the pricing of any contract change or  
15 modification for which the price adjustment is expected  
16 to exceed ~~\$500,000~~ *\$100,000*, or such lesser amount  
17 as may be prescribed by the head of the agency;

18 “(C) prior to the award of a subcontract at any  
19 tier, where the prime contractor and each higher tier  
20 subcontractor have been required to furnish such a cer-  
21 tificate, if the price of such subcontract is expected to  
22 exceed ~~\$500,000~~ *\$100,000*; or

23 “(D) prior to the pricing of any contract change  
24 or modification to a subcontract covered by clause (C),  
25 for which the price adjustment is expected to exceed



17

1       ~~\$500,000~~ \$100,000, or such lesser amount as may be  
2       prescribed by the head of the agency.

3       “(2) Any prime contract or change or modification  
4       thereto under which a certificate is required under paragraph  
5       (1) shall contain a provision that the price to the Govern-  
6       ment, including profit or fee, shall be adjusted to exclude any  
7       significant sums by which it may be determined by the execu-  
8       tive agency that such price was increased because the con-  
9       tractor or any subcontractor required to furnish such a certifi-  
10      cate, furnished cost or pricing data which, as of a date agreed  
11      upon between the parties (which date shall be as close to the  
12      date of agreement on the price as is practicable), was inaccu-  
13      rate, incomplete, or noncurrent.

14      “(3) For the purpose of evaluating the accuracy, com-  
15      pleteness, and currency of cost or pricing data required to be  
16      submitted by this subsection, any authorized representative of  
17      the head of the agency who is an employee of the United  
18      States Government shall have the right, until the expiration  
19      of three years after final payment under the contract or sub-  
20      contract, to examine all books, records, documents, and other  
21      data of the contractor or subcontractor related to the propos-  
22      al for the contract, the discussions conducted on the proposal  
23      under this chapter, pricing, or performance of the contract or  
24      subcontract.

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1       “(4) The requirements of this subsection need not be  
2 applied to contracts or subcontracts where the price is based  
3 on adequate price competition, established catalog or market  
4 prices of commercial items sold in substantial quantities to  
5 the general public, prices set by law or regulation or, in ex-  
6 ceptional cases where the head of the executive agency de-  
7 termines that the requirements of this subsection may be  
8 waived and states in writing his reasons for such determina-  
9 tion.”.

10                               CONFORMING AMENDMENTS

11       SEC. 103. (a) Title III of the Federal Property and Ad-  
12 ministrative Services Act of 1949 (41 U.S.C. 251 et seq.) is  
13 amended—

14               (1) in section 302 (41 U.S.C. 252)—

15                       (A) by striking out the second sentence in  
16 subsection (b);

17                       (B) by striking out subsections (c) and (d);  
18 and

19                       (C) by redesignating subsections (e) and (f) as  
20 subsections (c) and (d), respectively;

21               (2) by striking out the heading of section 304 and  
22 inserting in lieu thereof the following:

23                       “CONTRACT REQUIREMENTS”;

24               (3) in section 304 (41 U.S.C. 254)—

1 (A) by striking out “negotiated pursuant to  
2 section 302(c)” in the first sentence of subsection  
3 (a) and inserting in lieu thereof “awarded using  
4 other than sealed bid procedures”;

5 (B) by striking out “negotiated pursuant to  
6 section 302(c)” in the second sentence of subsec-  
7 tion (a) and inserting in lieu thereof “awarded  
8 after using other than sealed bid procedures”; and

9 (C) by striking out “negotiated without ad-  
10 vertising pursuant to authority contained in this  
11 Act” in the first sentence of subsection (c) and in-  
12 serting in lieu thereof “awarded after using other  
13 than sealed bid procedures”;  
14 (4) in section 307 (41 U.S.C. 257)—

15 (A) by striking out “Except as provided in  
16 subsection (b), and except” in the second sentence  
17 of subsection (a) and inserting in lieu thereof  
18 “Except”;

19 (B) by striking out subsection (b);

20 (C) by striking out “by paragraphs (11)–(13),  
21 or (14) of section 302(c),” in subsection (c);

22 (D) by redesignating subsection (c) as subsec-  
23 tion (b); and

24 (E) by striking out subsection (d);

1 (5) by striking out “entered into pursuant to sec-  
 2 tion 302(c) without advertising,” in section 308 and in-  
 3 serting in lieu thereof “made or awarded after using  
 4 other than sealed bid procedures”; and

5 (6) by striking out “section 302(c)(15) of this title  
 6 without regard to the advertising requirements of sec-  
 7 tions 302(c) and 303.” in section 310 and inserting in  
 8 lieu thereof “the provisions of this title relating to  
 9 other than sealed bid procedures.”.

10 (b) The table of contents of such Act is amended by  
 11 striking out the item relating to section 304 and inserting in  
 12 lieu thereof the following:

“Sec. 304. Contract requirements.”.

13 TITLE II—AMENDMENTS TO TITLE 10, UNITED  
 14 STATES CODE

15 COMPETITIVE AND NONCOMPETITIVE PROCEDURES

16 SEC. 201. (a) Chapter 137 of title 10, United States  
 17 Code, is amended—

18 (1) in section 2302—

19 (A) by inserting “the Secretary, any Deputy  
 20 Secretary, any Under Secretary, or any Assistant  
 21 Secretary of Defense;” after “means” in clause  
 22 (1);

23 (B) by striking out clauses (2) and (3) of sec-  
 24 tion 2302 and inserting in lieu thereof the follow-  
 25 ing:

1           “(2) ‘Agency’ means any department or establish-  
2           ment specified in section 2303(a) of this title.

3           “(3) ‘Competitive procedures’ means procedures  
4           under which the head of an agency enters into a con-  
5           tract after soliciting sealed bids or competitive propos-  
6           als from more than one source that is capable of satis-  
7           fying the needs of the agency.

8           “(4) ‘Noncompetitive procedures’ means proce-  
9           dures other than competitive procedures.

10           “(5) ‘Small purchase’ means any purchase or con-  
11           tract which does not exceed \$25,000. A proposed pro-  
12           curement shall not be divided into several procure-  
13           ments primarily for the purpose of using small pur-  
14           chase procedures.”;

15           (2) in section 2303(a)—

16                 (A) by redesignating clauses (1), (2), (3), (4),  
17                 and (5) as clauses (2), (3), (4), (5), and (6), respec-  
18                 tively; and

19                 (B) by inserting before clause (2) (as redesign-  
20                 ated by subclause (A)) the following:

21                 “(1) The Department of Defense.”;

22                 (3) by striking out sections 2304 and 2305 and in-  
23                 serting in lieu thereof the following:

1   **“§ 2304. Competition requirements**

2           “(a) Except as provided in subsection (e) of this section  
3 or otherwise authorized by law, the head of an agency shall  
4 use competitive procedures in making contracts for property  
5 and services. The head of an agency shall use advance pro-  
6 curement planning and market research and shall prepare  
7 specifications in such a manner as is necessary to obtain ef-  
8 fective competition with due regard to the nature of the prop-  
9 erty or services to be acquired. The head of an agency shall  
10 use the competitive procedure or combination of competitive  
11 procedures that is best suited under the circumstances of the  
12 procurement action and shall specify the needs of the agency  
13 and solicit bids, proposals, or quotations in a manner de-  
14 signed to achieve effective competition for the contract.

15           “(b) The head of an agency may award a contract under  
16 this title in the procurement of property or services in order  
17 to establish or maintain any alternative source or sources of  
18 supply of such property or services if such head of an agency  
19 determines that to do so would (1) increase competition and  
20 would likely result in reduced overall costs for such procure-  
21 ment, or for any anticipated procurement, of property or  
22 services, or (2) be in the interest of industrial mobilization in  
23 case of a national emergency.

24           “(c) Procurement regulations shall include special sim-  
25 plified procedures and forms for small purchases to facilitate  
26 making small purchases efficiently and economically.

1       “(d) For other than small purchases, the head of an  
2 agency, when using competitive procedures—

3           “(1) shall solicit sealed bids when—

4               “(A) time permits the solicitation, submis-  
5 sion, and evaluation of sealed bids;

6               “(B) the award will be made on the basis of  
7 price and other factors considered;

8               “(C) it is not necessary to conduct discus-  
9 sions with the responding sources about their bids;  
10 and

11              “(D) there is reasonable expectation of re-  
12 ceiving more than one sealed bid;

13              “(2) shall request competitive proposals from re-  
14 sponding sources when sealed bids are not required  
15 under clause (1) of this subsection.

16       “(e) The head of an agency may use noncompetitive  
17 procedures only when—

18              “(1) the property and services needed by the Gov-  
19 ernment are available from only one source and no  
20 other type of property or services will satisfy the needs  
21 of the agency;

22              “(2) the agency’s need for the property or services  
23 is of such *unusual and compelling* urgency that the  
24 Government would be seriously injured by the delay  
25 involved in using competitive procedures;

1           “(3) it is necessary to award the contract to a  
2           particular source or sources in order to maintain an es-  
3           sential industrial capability in the United States or to  
4           achieve national industrial mobilization;

5           “(4) the terms of ~~any agreement with any inter-~~  
6           ~~national agreement or treaty between the United States~~  
7           ~~Government and~~ a foreign government, or the direc-  
8           tions of any foreign government reimbursing the  
9           agency for the cost of the procurement of the property  
10          or services for such government, have the effect of re-  
11          quiring the use of noncompetitive procedures;

12          “(5) a statute provides that the procurement be  
13          made through another agency or a specified source; or

14          “(6) the disclosure of the agency’s needs to more  
15          than one source would compromise the national secu-  
16          rity.

17          “(f) The head of an agency may not award a contract,  
18          ~~for other than small purchases, using noncompetitive proce-~~  
19          ~~dures unless a notice has been published pursuant to section~~  
20          ~~2305(c)(1)(A)(i) of this title. using noncompetitive procedures~~  
21          unless—

22                 “(1) in the case of any contract other than a  
23                 small purchase, a notice has been published with re-  
24                 spect to such contract pursuant to section 2305(c) of  
25                 this title and all bids, proposals, and quotations re-



1        *ceived in response to such notice have been considered*  
2        *by such head of an agency; and*

3            *“(2) in the case of any contract exceeding*  
4        *\$100,000, the use of such procedures is approved by*  
5        *the head of the organizational element of such agency*  
6        *which has the responsibility to enter into such contract*  
7        *or by a designee of the head of such organizational ele-*  
8        *ment who is higher in such organizational element*  
9        *than the contracting officer issuing the solicitation with*  
10       *respect to such contract.*

11    **“§ 2305. Solicitation, evaluation, and award procedures;**  
12                    **notice requirements**

13        *“(a)(1)(A) Each solicitation under this title shall include*  
14       *specifications which—*

15            *“(i) consistent with the needs of the agency,*  
16        *permit effective competition; and*

17            *“(ii) include restrictive provisions or conditions*  
18        *only to the extent necessary to satisfy such needs or as*  
19        *authorized by law.*

20        *“(B) For the purposes of subparagraph (A) of this para-*  
21       *graph, the type of specification included in any solicitation*  
22       *shall depend on the nature of the needs of the agency and the*  
23       *market available to satisfy such needs. Subject to such needs,*  
24       *specifications may be stated in terms of—*

1           “(i) function so that a variety of products or serv-  
2       ices may qualify;

3           “(ii) performance, including specifications of the  
4       range of acceptable characteristics or of the minimum  
5       acceptable standards; or

6           “(iii) design requirements.

7       “(2) Each solicitation for sealed bids or competitive pro-  
8       posals other than for small purchases shall include, in addi-  
9       tion to the specifications described in paragraph (1) of this  
10      subsection—

11           “(A) a statement of—

12               “(i) all significant factors, including price,  
13               which the executive agency reasonably expects to  
14               consider in evaluating sealed bids or competitive  
15               proposals; and

16               “(ii) the relative importance assigned to  
17               those factors;

18           “(B) in the case of sealed bids—

19               “(i) a statement that sealed bids will be eval-  
20               uated without discussions with the bidders; and

21               “(ii) the time and place for the opening of  
22               the sealed bids; and

23           “(C) in the case of competitive proposals—

24               “(i) a statement that the proposals are in-  
25               tended to be evaluated with, and awards made

1           after, discussions with the offerors but might be  
2           evaluated and awarded without discussions with  
3           the offerors; and

4                   “(ii) the time and place for submission of  
5           proposals.

6           “(b)(1) The head of an agency shall evaluate sealed bids  
7   and competitive proposals based on the factors specified in  
8   the solicitation.

9           “(2) All sealed bids or competitive proposals received in  
10   response to a solicitation may be rejected if the head of an  
11   agency determines that such action is in the public interest.

12          “(3) Sealed bids shall be opened publicly at the time and  
13   place stated in the solicitation. The head of an agency shall  
14   evaluate the bids without discussions with the bidders and  
15   shall, except as provided in paragraph (2) of this subsection,  
16   award a contract with reasonable promptness to the responsi-  
17   ble bidder whose bid conforms to the solicitation and is most  
18   advantageous to the United States, considering the price and  
19   the other factors included in the solicitation under subsection  
20   (a)(2)(A) of this section. The award of a contract shall be  
21   made by transmitting written notice of the award to the suc-  
22   cessful bidder.

23          “(4)(A) The head of an agency shall evaluate competi-  
24   tive proposals and may award a contract—

1           “(i) after discussions conducted with the offerors  
2           at any time after receipt of the proposals and prior to  
3           the award of the contract; or

4           “(ii) without discussions with the offerors beyond  
5           discussions conducted for the purpose of minor clarifi-  
6           cation.

7           “(B) In the case of award of a contract under subpara-  
8           graph (A)(i) of this paragraph, the head of an agency shall  
9           conduct, before such award, written or oral discussions with  
10          all responsible offerors who submit proposals within a com-  
11          petitive range, price and other evaluation factors considered.

12          “(C) In the case of award of a contract under subpara-  
13          graph (A)(ii) of this paragraph, the head of an agency shall  
14          award the contract based on the proposals received (and as  
15          clarified, if necessary, in discussions conducted for the pur-  
16          pose of minor clarification).

17          “(D) The head of an agency shall, except as provided in  
18          paragraph (2) of this subsection, award a contract with rea-  
19          sonable promptness to the responsible offeror whose proposal  
20          is most advantageous to the United States, considering price  
21          and other factors included in the solicitation under subsection  
22          (a)(2)(A) of this section. The head of the agency shall award  
23          the contract by transmitting written notice of the award to  
24          such offeror and shall promptly notify all other offerors of the  
25          rejection of their proposals.

1       “(5) If the head of an agency considers that any bid  
2 received under sealed bid procedures evidences a violation of  
3 the antitrust laws, he shall refer the bid to the Attorney Gen-  
4 eral for appropriate action.

5       “(c)(1)(A) Except as provided in paragraph (3) of this  
6 subsection and subject to subparagraph (B) of this para-  
7 graph—subsection—

8           “(i) a head of an agency intending to enter into  
9 solicit bids, proposals, or quotations for a contract for  
10 property or services at a price exceeding the maximum  
11 amount established for small purchases in section  
12 2302(5) of this title \$10,000 shall furnish for publica-  
13 tion by the Secretary of Commerce a notice described  
14 in paragraph (2)(A) of this subsection; and

15           “(ii) a head of an agency awarding a contract for  
16 property or services at a price exceeding the maximum  
17 amount established for small purchases in section  
18 2302(5) of this title \$10,000 shall furnish for publica-  
19 tion by the Secretary of Commerce a notice announc-  
20 ing such award if there is likely to be any subcontract  
21 under such contract.

22       “(B) The Administrator for Federal Procurement Policy  
23 may establish such minimum price as he considers appropri-  
24 ate for the purposes of subparagraph (A) of this paragraph at

1 ~~an amount that is lower than the amount referred to in clause~~  
2 ~~(i) or (ii) of such subparagraph.~~

3       “(B) *The Secretary of Commerce shall publish prompt-*  
4 *ly in the Commerce Business Daily each notice required by*  
5 *subparagraph (A) of this paragraph.*

6       “(C) *Whenever a head of an agency is required by sub-*  
7 *paragraph (A)(i) of this paragraph to furnish a notice of a*  
8 *solicitation to the Secretary of Commerce, such head of an*  
9 *agency may not—*

10           “(i) *issue such solicitation earlier than fifteen*  
11 *days after the date on which such notice is published*  
12 *by the Secretary of Commerce; or*

13           “(ii) *establish a deadline for the submission of*  
14 *bids, proposals, or quotations in response to such solici-*  
15 *tation that is earlier than thirty days after the date on*  
16 *which such solicitation is issued.*

17       “(2)(A) Each notice required by paragraph (1)(A)(i) of  
18 this subsection shall *include—*

19           “(i) ~~be published as early as practicable in the~~  
20 ~~procurement process, but not less than thirty days~~  
21 ~~before the date set for the receipt of bids or proposals;~~  
22 ~~and~~

23           “(ii) ~~include a description of the property or serv-~~  
24 ~~ices to be contracted for (which description is not un-~~  
25 ~~necessarily restrictive of competition), the identity and~~

1       ~~location of the officer or employee of the agency who~~  
2       ~~may be contacted for the purpose of obtaining a copy~~  
3       ~~of the solicitation, a statement that any person may~~  
4       ~~submit a bid, proposal, or quotation which shall be con-~~  
5       ~~sidered by the head of an agency, and in the case of a~~  
6       ~~procurement using noncompetitive procedures, a state-~~  
7       ~~ment of the reason justifying the use of noncompetitive~~  
8       ~~procedures and the identity of the intended source.~~

9       ~~“(B) The Secretary of Commerce shall publish promptly~~  
10      ~~each notice required by paragraph (1)(A)(ii) of this subsection~~  
11      ~~after the time of the award of the contract.~~

12      ~~“(3) The requirements of paragraph (1) of this subsec-~~  
13      ~~tion do not apply to—~~

14           ~~“(A) any classified procurement with respect to~~  
15           ~~which a notice under such paragraph cannot be written~~  
16           ~~in a manner which avoids the disclosure of classified~~  
17           ~~information; and~~

18           ~~“(B) any procurement under conditions described~~  
19           ~~in clause (2), (3), (4), or (5) of section 2304(e).”;~~ and

20           ~~“(A) a description of the property or services to be~~  
21           ~~contracted for, which description is not unnecessarily~~  
22           ~~restrictive of competition;~~

23           ~~“(B) the name and address of the officer or em-~~  
24           ~~ployee of the agency who may be contacted for the pur-~~  
25           ~~pose of obtaining a copy of the solicitation;~~

1           “(C) a statement that any person may submit a  
2       bid, proposal, or quotation which shall be considered by  
3       the agency; and

4           “(D) in the case of a procurement using noncom-  
5       petitive procedures, a statement of the reason justifying  
6       the use of noncompetitive procedures and the identity of  
7       the intended source.

8           “(3)(A) A notice is not required under paragraph (1)(A)  
9       of this subsection if the notice would disclose the agency’s  
10      needs and the disclosure of such needs would compromise the  
11      national security.

12          “(B) The requirements of paragraph (1)(A)(i) of this  
13      subsection do not apply—

14           “(i) to any procurement under conditions de-  
15      scribed in clause (2), (3), (4), or (5) of section 2304(e)  
16      of this title; and

17           “(ii) in the case of any procurement for which the  
18      head of the agency carrying out such procurement  
19      makes a determination in writing, with the concurrence  
20      of the Administrator of the Small Business Adminis-  
21      tration, that it is not appropriate or reasonable to pub-  
22      lish a notice before issuing a solicitation.”; and

23           (4) by adding at the end thereof the following new  
24      section:



1   **“§ 2316. Record requirements**

2           “(a) Each head of an agency shall establish and main-  
3   tain for a period of five years a record, by fiscal year, of the  
4   procurements, other than small purchases, in such fiscal year  
5   in which—

6           “(1) noncompetitive procedures were used; and

7           “(2) only one bid or proposal was received after  
8   competitive procedures were used.

9           “(b) The record established under subsection (a) of this  
10   section shall include, with respect to each procurement—

11           “(1) information identifying the source to whom  
12   the contract was awarded;

13           “(2) the property or services obtained by the Gov-  
14   ernment under the procurement;

15           “(3) the total cost of the procurement;

16           “(4) the reason under section 2304(e) of this title  
17   for the use of noncompetitive procedures; and

18           “(5) the position of the officers or employees of  
19   the agency who required and approved the use of non-  
20   competitive procedures in such procurement.

21           “(c) The information included in the record established  
22   and maintained under subsection (a) shall be transmitted to  
23   the Federal Procurement Data Center referred to in section  
24   6(d)(5) of the Office of Federal Procurement Policy Act (41  
25   U.S.C. 405(d)(5)).”.

1 (b) The table of sections at the beginning of such chap-  
2 ter is amended—

3 (1) by striking out the items relating to sections  
4 2304 and 2305 and inserting in lieu thereof the  
5 following:

“2304. Competition requirements.

“2305. Solicitation, evaluation, and award procedures; notice requirements.”;

6 and

7 (2) by adding at the end thereof the following new  
8 item:

“2316. Record requirements.”.

9 CONFORMING AMENDMENTS

10 SEC. 202. Chapter 137 of title 10, United States Code,  
11 is amended—

12 (1) in section 2306—

13 (A) by striking out “may, in negotiating con-  
14 tracts under section 2304,” in the second sen-  
15 tence of subsection (a) and inserting in lieu thereof  
16 “may in awarding contracts after using other than  
17 sealed bid procedures”;

18 (B) by striking out “negotiated under section  
19 2304” in the first sentence of subsection (b) and  
20 inserting in lieu thereof “awarded after using  
21 other than sealed bid procedures”;

35

1 (C) by striking out "section 2304 of this  
2 title," in subsection (c) and inserting in lieu there-  
3 of "this chapter";

4 (D) in subsection (f)(1)—

5 (i) by striking out clause (A) and insert-  
6 ing in lieu thereof the following:

7 "(1) prior to the award of any prime contract  
8 under this title after using other than sealed bid proce-  
9 dures where the price is expected to exceed ~~\$500,000~~  
10 \$100,000;";

11 (ii) by striking out "negotiated" each  
12 place it appears in the second paragraph; ~~and~~

13 (iii) by striking out "negotiation," in the  
14 third paragraph and inserting in lieu thereof  
15 "proposal for the contract, the discussions  
16 conducted on the proposal under this title,";  
17 and

18 (iv) *by striking out "\$500,000" each*  
19 *place it appears in clauses (B), (C), and (D)*  
20 *and inserting in lieu thereof "\$100,000";*  
21 *and*

22 (E) by adding at the end thereof the follow-  
23 ing new subsection:

24 "(i) Except in a case in which the Secretary of Defense  
25 determines that military requirements necessitate the specifi-

1 cation of container sizes, no contract for the carriage of Gov-  
2 ernment property in other than Government-owned cargo  
3 containers shall require carriage of such property in cargo  
4 containers of any stated length, height, or width.”;

5 (2) by striking out subsection (b) of section 2310  
6 and inserting in lieu thereof the following:

7 “(b) Each determination or decision under section  
8 2306(c), section 2306(g)(1), section 2307(c), or section  
9 2313(c) of this title shall be based on a written finding by the  
10 person making the determination or decision, which finding  
11 shall set out facts and circumstances that (1) clearly indicate  
12 why the type of contract selected under section 2306(c) is  
13 likely to be less costly than any other type or that it is im-  
14 practicable to obtain property or services of the kind or qual-  
15 ity required except under such a contract, (2) support the  
16 findings required by section 2306(g)(1), (3) clearly indicate  
17 why advance payments under section 2307(c) would be in the  
18 public interest, or (4) clearly indicate why the application of  
19 section 2313(b) to a contract or subcontract with a foreign  
20 contractor or foreign subcontractor would not be in the public  
21 interest. Such a finding is final and shall be kept available in  
22 the agency for at least six years after the date of the determi-  
23 nation or decision. A copy of the finding shall be submitted to  
24 the General Accounting Office with each contract to which it  
25 applies.”;

1           (3) by striking out section 2311 and inserting in  
2       lieu thereof the following: "The head of an agency may  
3       delegate, subject to his direction, to any other officer  
4       or official of that agency, any power under this chap-  
5       ter."; and

6           (4) by striking out "negotiated" in the second sen-  
7       tence of section 2313(b) and inserting in lieu thereof  
8       "awarded after using other than sealed bid proce-  
9       dures".

10       **TITLE III—ADVOCATE FOR COMPETITION;**  
11       **ANNUAL REPORT ON COMPETITION**

12                               **DEFINITION**

13       **SEC. 301.** For the purposes of this title, the term "ex-  
14       ecutive agency" has the same meaning as provided in section  
15       4(a) of the Office of Federal Procurement Policy Act (41  
16       U.S.C. 403(a)).

17                               **ADVOCATE FOR COMPETITION**

18       **SEC. 302. (a)(1)** There is established in each executive  
19       agency an advocate for competition.

20       (2) Each head of an executive agency shall—

21           (A) designate for each executive agency one offi-  
22       cer or employee serving in a position authorized for  
23       such executive agency on the date of enactment of this  
24       Act to serve as the advocate for competition;

1           (B) relieve such officer or employee of all duties  
2           and responsibilities that are inconsistent with the duties  
3           and responsibilities of the advocate for competition; and

4           (C) provide such officer or employee with such  
5           staff or assistance as may be necessary to carry out the  
6           duties and responsibilities of the advocate for competi-  
7           tion.

8           (b)(1) The advocate for competition shall promote com-  
9           petition in the procurement of property and services.

10          (2) The advocate for competition in an executive agency  
11          shall—

12               (A) review the purchasing and contracting activi-  
13               ties of the executive agency;

14               (B) identify and report to the head of the execu-  
15               tive agency—

16                   (i) opportunities to achieve competition on  
17                   the basis of price and other significant factors in  
18                   the purchases and contracts of the executive  
19                   agency;

20                   (ii) solicitations and proposed solicitations  
21                   which include unnecessarily detailed specifications  
22                   or unnecessarily restrictive statements of need  
23                   which may reduce competition in the procurement  
24                   activities of the executive agency; and

1           (iii) any other condition or action which has  
2           the effect of unnecessarily restricting competition  
3           in the procurement actions of the executive  
4           agency; and

5           (C) prepare and transmit to the head of the execu-  
6           tive agency an annual report describing his activities  
7           under this section.

8                               ANNUAL REPORT

9           SEC. 303. (a) Not later than September 30 of each of  
10          1983, 1984, 1985, and 1986, each head of an executive  
11          agency shall transmit to the Committee on Governmental Af-  
12          fairs of the Senate and the Committee on Government Oper-  
13          ations of the House of Representatives an annual report in-  
14          cluding the information specified in subsection (b).

15          (b) Each report transmitted under subsection (a) shall  
16          include—

17               (1) a specific description of all actions that the  
18               head of the executive agency intends to take during  
19               the next fiscal year to—

20                       (A) increase competition for contracts with  
21                       the executive agency on the basis of price and  
22                       other significant factors; and

23                       (B) reduce the number and dollar value of  
24                       contracts entered into by the executive agency  
25                       after soliciting bids or proposals from, or evaluat-

1           ing bids or proposals with discussions with, only  
2           one source; and

3           (2) a summary of the activities and accomplish-  
4           ments of the advocates for competition of the executive  
5           agency during the fiscal year in which the report is  
6           transmitted.

7 ~~TITLE IV—NOTICE REQUIREMENTS UNDER THE~~  
8 ~~SMALL BUSINESS ACT~~

9       ~~SEC. 401. Section 8(e) of the Small Business Act (72~~  
10 ~~Stat. 389; 15 U.S.C. 637(e)) is repealed.~~

11           TITLE V ~~IV~~—APPLICABILITY

12       ~~SEC. 501. 401.~~ The amendments made by this Act shall  
13       apply with respect to any solicitations for bids or proposals  
14       issued on or after the date one hundred and eighty days after  
15       the date of the enactment of this Act.

○